

Summary of Revenue Administrative Bulletins (RABs) 1998-1 and 1999-1

To view the full text of RABs 1998-1 and 1999-1, visit www.michigan.gov/treasury

SINGLE BUSINESS TAX (SBT)

The Michigan Court of Appeals determined in *Gillette Co v Dep't of Treasury* (1993), and *Guardian Industries Corp v Dep't of Treasury* (1993), that Public Law (PL) 86-272, 15 USC 318(a), did not apply to SBT since it is a **value-added tax and not an income tax**. Any activity that would otherwise be considered protected under PL 86-272 will **not** be protected for the purpose of determining nexus for SBT.

Any business soliciting sales or performing services in Michigan with a resident or nonresident employee, agent, representative, independent contractor, broker, or others acting on the company's behalf, has nexus with Michigan and may be liable for SBT. The SBT nexus standards apply to all open years from 1989 forward. SBT returns must be filed if a company has nexus with Michigan and annual apportioned gross receipts equal or exceed the filing threshold.

Once nexus is established by a taxpayer during a tax year for SBT purposes, nexus shall exist for that taxpayer for that entire year.

For tax years 2003 and forward, the filing threshold is \$350,000. If the taxpayer is a member of an affiliated group, a controlled group of corporations or an entity under common control, the filing threshold is different. For each year, the group must sum the apportioned gross receipts of its members. The group should **not** include members without nexus or having less than \$100,000 in apportioned gross receipts. Each member having nexus with Michigan and at least \$100,000 in apportioned gross receipts has an SBT filing requirement, provided the group's total apportioned gross receipts is at least \$350,000.

USE TAX

A seller is subject to Use Tax collection responsibility under the Use Tax Act if it has nexus with Michigan. The Use Tax nexus standards apply to all open years.

NEXUS CREATING ACTIVITIES

An out-of-state business is subject to Michigan's SBT and Use Tax jurisdiction when it engages in the following activities:

1. Its employees, agents, representatives, independent contractors, brokers or others acting on behalf of the out-of-state business, are present in Michigan **at least two days on an annual basis** conducting activities to establish or maintain the market for the out-of-state business whether or not these individuals or organizations reside in Michigan.

Activities that establish or maintain the market for the out-of-state business include, but are not limited to:

- Soliciting sales
- Making repairs or providing maintenance or service to property sold or to be sold
- Collecting current or delinquent accounts, through assignment or otherwise, related to sales of tangible personal property or services
- Delivering property sold to customers
- Installing or supervising installation at or after shipment or delivery
- Conducting training for employees, agents, representatives, independent contractors, brokers or others acting on the out-of-state business's behalf or for customers or potential customers
- Providing customers any kind of technical assistance or service including, but not limited to, engineering assistance, design service, quality control, product inspections, or similar services
- Investigating, handling, or otherwise assisting in resolving customer complaints
- Providing consulting services
- Soliciting, negotiating, or entering into franchising, licensing, or similar agreements

- Owning, renting, leasing, maintaining, or having the right to use and using tangible personal or real property that is permanently or temporarily physically located in Michigan
- Having employees who own, rent, lease, use or maintain an office or other place of business in Michigan
- Having goods delivered to Michigan in vehicles the out-of-state business owns, rents, leases, uses or maintains or having goods delivered by a related party acting as a representative of the out-of-state business

Examples

A company that uses its own truck to deliver goods to purchasers in Michigan has nexus with Michigan.

A company whose wholly owned subsidiary acting as its representative delivers goods to purchasers in Michigan will have nexus with Michigan.

A company that has all of its goods delivered to purchasers in Michigan by an unrelated common carrier will not have nexus with Michigan.

- Having agents, representatives, independent contractors, brokers or others, acting on its behalf, who own, rent, lease, use, or maintain an office or other place of business in Michigan, and this property is used in the representation of the out-of-state business in Michigan.

2. If none of an out-of-state business's contacts in Michigan fall under paragraph 1 above and its only contacts with Michigan are limited to any of the contacts listed below, such contacts do not create nexus. If an activity is listed below and that activity also is described in paragraph 1 above, then paragraph 1 controls, and the out-of-state business is subject to Michigan's SBT and Use Tax jurisdiction.

- Meetings with in-state suppliers of goods or services
- In-state meeting with government representatives in their official capacity
- Attending occasional meetings (e.g., board meetings, retreats, seminars and conferences sponsored by others, schools or other training sponsored by others, etc.)
- Holding recruiting or hiring events
- Advertising in the state through various media
- Renting customer lists to or from an in-state entity
- Attending a trade show at which no orders for goods are taken and no sales are made
- Participating in a trade show at which no orders for goods are taken and no sales are made for less than ten days cumulatively on an annual basis.

Note: Lawyers, accountants, investment bankers, and other similar professionals in Michigan, who perform their customary services for an out-of-state business in their professional capacity, shall not be considered to be establishing or maintaining the market on behalf of the out-of-state business.